(3)

(1)

Single Bench

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION NO. 5782/2004

PETITIONERS
(Defendants)

1. Agrahij S/o shri Baisakhu sahu, aged about 45 years, occupation agriculturist.
2. Jageshwar Singh S/o shri Baisakhu sahu, aged about 40 years, occupation agriculturist.
3. Kumari Bai D/o shri Thanwar Sahu, aged about 22 years, occupation agriculturist, all resident of village Latabod, teshsil Balod dist. Durg (C.G.)
4. Latkhor S/o Govind Sahu, resident of Fhafhadih Raipur, Near Nili building Raipur dist. Raipur (C.G.)
5. Birghu Ram S/o Govind Sahu, resident of Ghafhadih Raipur, Near Nilibuilding Raipur dist. Raiipur (C.G.)
6. Bideshi Ram S/o Govind Sahu resident of Bharat Medical Stores Raipur dist. Raipur (C.G.)
7. Dayalu S/o shri Thukel Sahu, aged about 45 years, occupation agriculturist.
8. Heeru Ram S/o shri Thukel Sahu, aged about 43 years, occupation agriculturist, petitioner No.7 & 8 resident of village Latabod, tahsil Balod, dist. Durg (C.G.)
9. Dhaniya Bai W/o Jhadi Sahu, aged about 40 years, resident of village Dadhaari, tehsil Balod, dist. Durg (C.G.)
10. Gaytri Bai W/o Shukhi Ram Sahu, aged about 26 years, occupation-agriculturist, R/O Amlidih, Raipur Dist. Raipur (C.G.)

P.R. No. 4778/04
Presented by Shri R.S. Pathak
dated 07.12.04

CERTIFIED COPY
Clerk to A.G. Bilaspur

VERSUS

RESPONDENTS (Plaintiff)	1.	Smt. Kushala Bai Wd/o late Shri Ghewarchand Jain, aged about 70 years, occupation house wife resident of Sawdesee khadi Bhandar Hatari Bajar Durg Dist. Durg (C.G.)
(Defendant).	2.	State of Chhattisgarh through Collector Durg, dist. Durg (C.G.)

WRIT PETITION UNDER ARTICLE 227 OF THE COUNSTITUTION OF INDIA.

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक W.P.4782/ **सन्** 2004

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

11-3-2005

On a mention being made, the case is taken up for hearing.

Mr. R.S. Patel, counsel for the petitioners.

Mr. Vivek Sharma, Panel Lawyer for the State/respondent No.2.

The petitioners have preferred this writ petition under Article 227 of the Constitution of India, being aggrieved by the order dated 30-9-2004 passed by the Additional District Judge, Balod, Durg, whereby, the learned Additional District Judge allowed the application filed by respondent No.1 plaintiff under Section 5 of the Limitation Act for condonation of delay in filing the miscellaneous appeal.

Brief facts leading to filing of this writ petition are that respondent No.1 herein filed a civil suit for possession and compensation against the petitioners herein in which respondent No.1 adduced her evidence and the matter was fixed for the petitioners'/defendants' evidence, and for that purpose the matter was fixed on 9-8-2000. However, on that date respondent No.1 and her counsel were not present and the matter was dismissed in default against which an application for restoration under Order 9 Rule 9 of the C.P.C. was filed, but the same was also dismissed by the trial Court on the ground that the suit is not being prosecuted by the plaintiff with due diligence. Aggrieved by that order, respondent No.1 filed miscellaneous appeal before the Additional District Judge, however, that appeal was barred by limitation by 28 days. Therefore, an application for condonation of delay under Section 5 of the Limitation Act was filed by respondent No.1 herein explaining the delay that on 27-1-2002 she went to Rajasthan and from there she returned on 27-3-2002, then she came to know about the dismissal of the suit and on coming to know about that fact she filed this appeal on 4-4-2002. In support of the application under Section 5 of the Limitation Act,

(पीछे देखिये)

(30)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक W.P.4784 **सन्** 2004

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

respondent No.1 herein filed an affidavit. As per the impugned order that affidavit filed by respondent No.1 was not controverted by the petitioners herein and considering the ground shown by respondent No.1, the learned appellate Court condoned the delay and allowed the application of respondent No.1 herein.

I have heard learned counsel for the petitioners on admission.

Having heard learned counsel for the petitioners, I have perused the impugned order. Perusal of the impugned order shows that the order of the learned Court below is based on sound reasonings and that too respondent No.1 herein filed an affidavit showing the cause of delay and that was not controverted by the petitioners herein. Moreover, when all the evidence was already adduced by respondent No.1 in support of her case, the matter was fixed for evidence of the petitioners'/defendants' herein and respondent No.1 being a lady she was not required to remain present on each and every date, in the circumstances, in passing the impugned order, in my opinion, the Court below has not committed any illegality or irregularity, which requires interference by this Court by invoking extraordinary jurisdiction under Article 227 of the Constitution of India. Therefore, this writ petition has no merit, the same is liable to be dismissed and it is accordingly, dismissed, at the admission stage itself. No costs.

Consequently, M.(W.)P No.5064/2004 and I.A.No.9517/2004 stand disposed of.

Sd/-
L.C. Bhadoo
Judge

Soma

(पीछे देखिये)